

State of Missouri
Office of Secretary of State

Case No. AP-09-41

IN THE MATTER OF:

KENNETH NEELY, CRD#1586038

Respondent.

Serve: Kenneth Neely
320 Turnberry Place Apt. C
St. Peters, Missouri 63376

**ORDER TO CEASE AND DESIST AND ORDER TO SHOW
CAUSE WHY RESTITUTION, CIVIL PENALTIES, AND
COSTS SHOULD NOT BE IMPOSED**

On October 22, 2009, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through its Assistant Commissioner, Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. Kenneth Neely ("Neely") was registered as a securities agent in Missouri through the Central Registration Depository System ("CRD") with CRD number 1586038. Neely was registered as a securities agent in Missouri with Stifel, Nicolaus & Company, Inc. ("Stifel"), from October, 2002 to January, 2007. Neely worked out of a Stifel branch office located at 114 Piper Hill Drive, St. Peters, Missouri 63376. Neely was registered in Missouri as a securities agent with AXA Advisors, LLC ("AXA"), from August, 2007 to July, 2009. Neely worked out of an AXA branch office located at 8235 Forsyth Blvd. Suite 800, Clayton, Missouri 63105. Neely has an address of 320 Turnberry Place Apt. C, St. Peters, Missouri 63376.
2. Stifel is a Missouri-registered broker-dealer with an address of 501 North Broadway, St. Louis, Missouri 63102. Stifel is registered in Missouri through the CRD with CRD number 793.
3. AXA is a Missouri-registered broker-dealer with an address of 1290 Avenue of the Americas, New York, New York 10104. AXA is registered in Missouri through the CRD with CRD number 6627.
4. As used in this document, the term "Respondent" refers to Neely.
5. From at least January 2002 through July 2009, Neely recommended that at least

sixteen individuals invest in excess of six hundred forty-one thousand dollars (\$641,000) in a St. Charles real estate investment trust (the "St. Charles REIT") through St. Louis Investment Club. Neely promised some of these investors high rates of return on the investment.

6. In 2002, Neely contacted a fifty-three (53) year-old Missouri resident ("MR1") from St. Charles, Missouri regarding an investment. MR1 knew Neely because they frequented the same country club. MR1 had an account at Stifel and Neely was the registered agent on that account.
7. Neely told MR1, among other things, that:
 - a. Neely was on the board of an investment club;
 - b. the members of the club invested in the St. Charles REIT;
 - c. because Neely was on the board of the investment club, Stifel would not accept any checks for investments in either the club or the St. Charles REIT; and
 - d. checks must be written payable to Neely.
8. Since 2002, MR1 has written checks to Neely totaling eighty-one thousand dollars (\$81,000) for investments in the St. Charles REIT.
9. MR1 stated that Neely did not disclose, among other things, the following:
 - a. that the investment was not registered in the State of Missouri;
 - b. that money invested would be spent on Neely's personal expenses; and
 - c. that the certificates were created on Neely's personal computer.
10. None of the funds invested in the St. Charles REIT were ever deposited into MR1's brokerage account at Stifel.
11. MR1 referred Neely to two family members, MR2 and MR7.
12. Neely met with MR2, a twenty-one (21) year-old from Columbia, Missouri, and discussed an investment in the St. Charles REIT. In the meeting Neely told MR2 that MR1 had invested in the St. Charles REIT. Because of Neely's relationship with MR1, MR2 did not question Neely further on the details of the investment. MR2 had an account at Stifel and Neely was the registered agent of that account.
13. In an interview with an Enforcement Section investigator, MR2 stated, among other things, the following:
 - a. Neely did not disclose to MR2 that the investment was not on the books and records of Stifel;
 - b. Neely did not disclose to MR2 the investment was not registered in the State of Missouri;

- c. Neely did not disclose to MR2 that the money would be placed into Neely's personal banking account;
 - d. Neely did not disclose how returns would be calculated;
 - e. Neely did not disclose to MR2 that invoices were created on Neely's personal computer; and
 - f. Neely did not disclose any risks that were involved with the investment.
14. In or around 2004, MR2 wrote a check to Neely totaling six thousand dollars (\$6,000) for an investment in the St. Charles REIT.
15. None of the funds invested in the St. Charles REIT were ever deposited into MR2's brokerage account at Stifel.
16. In 2002, Neely contacted a fifty-seven (57) year-old Missouri resident ("MR3") from Florissant, Missouri, about an investment in the St. Charles REIT. MR3 had an account at Stifel and Neely was the registered agent on that account.
17. Neely told MR3, among other things, the following:
- a. that a few of MR3's friends were investing in the investment club;
 - b. the investment club would buy real estate and then investors would get paid when this real estate was sold; and
 - c. the investment club would pay all taxes incurred on behalf of MR3 from an investment in the St. Charles REIT.
18. In an interview with an Enforcement Section investigator, MR3 stated:
- a. Neely would call MR3 as units became available in the St Charles REIT;
 - b. MR3 believed that the risks of the investment were tied to the real estate market;
 - c. since 2002, MR3 wrote checks payable to Neely for a total investment of thirty-six thousand dollars (\$36,000) in the St. Charles REIT; and
 - d. after one investment in January 2006, MR3 received an invoice from Neely. This invoice stated that MR3 had invested in the St. Charles REIT.
19. None of the funds invested in the St. Charles REIT were ever deposited into MR3's brokerage account at Stifel.
20. Neely met with a seventy-nine (79) year-old Missouri resident from St. Charles, Missouri ("MR4"). Neely had known MR4 since at least 1994. MR4 had an account at Stifel and Neely was the registered agent on that account.
21. In an interview with an Enforcement Section investigator, MR4 stated, among other things, the following:

- a. Neely told MR4 that money invested in the St. Charles REIT was to be invested in land for development;
 - b. MR4 and other investors would receive returns from the sale of the developed property;
 - c. Neely did not explain that the investment was not on the books and records of Stifel;
 - d. Neely did not disclose to MR4 that the investment was not registered in the State of Missouri; and
 - e. MR4 was never told by Neely that the money MR4 invested would be used for Neely's personal expenses.
22. MR4 invested a total of sixty-six thousand dollars (\$66,000) with Neely and the St. Louis Investment Club to invest in the St. Charles REIT. In or around 2005 was the final time that MR4 invested into the St. Louis Investment Club.
23. None of the funds invested in the St. Charles REIT were ever deposited into MR4's brokerage account at Stifel.
24. Prior to 1997, Neely met a sixty-seven (67) year-old Missouri resident from Augusta, Missouri ("MR5"), through a religious organization. MR5 had an account with Stifel and Neely was the registered agent on that account.
25. In an interview with an Enforcement Section investigator, MR5 stated, among other things, that:
- a. from November, 2004 to August 28, 2007, MR5 invested fifty-eight thousand dollars (\$58,000) with Neely and the St. Louis Investment Club in the St. Charles REIT;
 - b. MR5 received periodic interest checks from Neely as a result of these investments; and
 - c. since August, 2007, MR5 has not received any additional interest payments from Neely, the St. Louis Investment Club or the St. Charles REIT.
26. MR5 stated that Neely did not disclose, among other things, the following:
- a. the REIT was not registered in the State of Missouri;
 - b. that money invested would be spent on Neely's personal expenses; or
 - c. that the certificates were created on Neely's personal computer.
27. In 2006, Neely met a forty-eight (48) year-old St. Louis, Missouri resident ("MR6"), through a mutual friend. In 2008, Neely approached MR6 about investing with the St. Louis Investment Club. MR6 had an account at Stifel and Neely was the registered agent on that account. MR6 moved this account to AXA when Neely became a registered agent at AXA.

28. In 2008, Neely told MR6, among other things, the following:
- the returns on the St. Charles REIT were "great;"
 - that Marshall Faulk, the professional football player, was an investor in the St. Charles REIT; and
 - that there were no risks with the investment.
29. In an interview with an Enforcement Section investigator, MR6 stated, among other things, that:
- Neely never explained that the investment was not recorded on the books and records at AXA;
 - Neely did not explain that the St. Charles REIT was not registered in the State of Missouri;
 - Neely never explained that the invested funds would be placed into Neely's personal checking account and used for personal expenses; and
 - Neely never produced any background or financial information on the St. Louis Investment Club.
30. On February 3, 2008, MR6 invested twenty thousand dollars (\$20,000) with Neely and the St. Louis Investment Club to invest in the St. Charles REIT. None of these funds were ever deposited into MR6's brokerage account at AXA.
31. On or before August 1, 2007, Neely spoke with a forty-five (45) year-old resident of El Segundo, California ("CR1"), regarding an investment in the St. Charles REIT.
32. In an interview with an Enforcement Section investigator, CR1 stated, among other things, that:
- Neely led CR1 "to believe that there was a consortium of folks that would use the funds somehow for the development of a REIT;"
 - Neely told CR1 that there were no risks with the investment;
 - Neely did not tell CR1 that the St. Charles REIT was not registered in the State of Missouri or any other state; and
 - Neely did not tell CR1 that the investment would be used for Neely's personal expenses.
33. On August 1, 2007, CR1 invested ten thousand dollars (\$10,000) with Neely and the St. Louis Investment Club into the St. Charles REIT.
34. On or after this investment, CR1 received an invoice that stated, among other things, the following:
- "Unit Value and minimum investment = \$10,000.00;"

- b. "Income from sales of properties First year per unit = 20%;"
 - c. "Income from sales of properties Second year per unit = 10%;"
 - d. "Income from sales of properties Third year per unit = 5 to 10%;"
 - e. "Income from sales of properties the Fourth year = 5%;" and
 - f. "Return of Principle the Fourth year."
35. Neely was not registered as a securities agent in the State of Missouri at the time of CR1's investment in the St. Charles REIT.
36. Prior to July, 2007, a seventy-one (71) year-old Bethesda, Maryland resident ("MDR1"), began working with Neely.
37. On July 12, 2007, MDR1 invested fifty-four thousand dollars (\$54,000) with Neely and the St. Louis Investment Club in the St. Charles REIT.
38. At the time of this investment, Neely was not registered as a securities agent in the State of Missouri.
39. On September 29, 2007, MDR1 invested fifty thousand dollars (\$50,000) with Neely and the St. Louis Investment Club in the St. Charles REIT.
40. In an interview with an Enforcement Section investigator, MDR1 stated, among other things, the following:
- a. Neely never told MDR1 that the investment money would be placed in Neely's personal bank account;
 - b. it was implied by Neely that the interest MDR1 received was from returns of the St. Charles REIT and not from investors; and
 - c. Neely told MDR1 that the investment was risk free.
41. None of the funds invested on July 12, 2007 and September 29, 2007, in the St. Charles REIT, were ever deposited into MR3's brokerage account at AXA.
42. On September 3, 2009, the Enforcement Section requested information from Stifel relating to their supervision of Neely while he was employed as a securities agent. These records revealed among other things, the following:
- a. on June 3, 2005, Stifel received a court order to garnish Neely's wages from a Missouri Bank to recoup five thousand eight hundred twenty-eight dollars and eighty-five cents (\$5,828.85). The garnishment was on a loan Neely obtained for the purchase of a vehicle. Stifel sent a letter to Neely bringing the garnishment to Neely's attention. The Stifel St. Charles Branch Office Manager ("BOM") was copied on the letter. No additional supervision at Stifel was initiated as a result of this garnishment of Neely's wages;
 - b. on June 7, 2005, MR7, a seventy-five (75) year-old from St. Charles, Missouri,

brought a cashier's check into the St. Charles, Missouri, Stifel branch office in the amount of fifteen thousand dollars (\$15,000);

- c. the BOM intercepted the cashier's check and discovered that it was written payable to Neely's wife;
- d. the BOM subsequently questioned MR7 about why this check was written to Neely's wife. MR7 responded that "he didn't know;"
- e. that afternoon the BOM asked Neely for a "statement" of the details involving MR7 and the check written to Neely's wife. Neely stated in an e-mail to the BOM that Neely's wife and MR7 had arranged for MR7 to buy Neely's Ford Explorer without Neely's knowledge. A confirmation letter of the transaction was sent by the BOM to MR7, and the letter of confirmation was returned, signed by MR7;
- f. on the same day, June 7, 2005, the BOM made the note "things that don't add up," concerning the interactions between MR7, Neely, and the BOM. The list of questions included:
 - i. "Why a cashier's check made to [Neely's wife.] They were close friends - why not a personal check;"
 - ii. "Why did client drop off check to [Neely] if it was a surprise - client hand wrote [Neely's] name on the envelope and wrote 'personal and confidential';" and
 - iii. "When I called [MR7] why didn't he just say it was for a car? Why the secrecy?"
- g. on August 25, 2005, a Letter of Concern was sent to Neely from the BOM concerning Neely's significant swings in production and the increased potential for compliance issues that sometimes accompany struggling production situations. This Letter of Concern indicated "continued employment will not be possible" if production did not meet the acceptable minimum annual amount;
- h. on December 27, 2006, Neely's assistant sent an e-mail to the BOM requesting prior approval for Neely to deliver a check to MR7 for five thousand dollars (\$5,000) from MR7's account;
- i. on January 2, 2007, the BOM sent a letter to MR7 to confirm MR7's receipt of the five thousand dollar (\$5,000) withdrawal check;
- j. on January 3, 2007, the BOM asked Neely for all bank statements and copies of deposits as a condition of continued employment. Neely did not comply with the BOM's request for bank statements;
- k. on January 12, 2007, Neely sent a resignation letter to the BOM effective the same day; and
- l. Stifel submitted a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Neely on January 17, 2007, stating, among other

things, the following:

- i. Neely is not currently, or at termination was, under internal review for fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct; and
 - ii. Neely did not voluntarily resign from Stifel, nor was Neely discharged or permitted to resign from Stifel, after allegations were made that accused Neely of violating investment-related statutes, regulations, rules or industry standards of conduct or fraud or the wrongful taking of property.
43. For the period January 12, 2007, to August 14, 2007, when AXA submitted an application for agent registration on Neely's behalf, Neely was not affiliated or registered with a broker-dealer in the State of Missouri.
44. On August 14, 2007, the same day AXA submitted the agent registration request, the Commissioner of Securities for the State of Missouri issued a Summary Suspension of Agent Application. Neely was registered in Missouri December 21, 2007, after AXA placed Neely on special supervision.
45. On July 21, 2009, a Securities Division investigator interviewed AXA Counsel. Counsel stated, among other things, that on July 8, 2009, Neely was interviewed with his counsel at the AXA offices and stated, among other things, that:
 - a. since 1995, Neely had been soliciting members for the St. Louis Investment Club and investors in the St. Charles REIT. In return for the investment, Neely would give certificates for either the St. Louis Investment Club or the St. Charles REIT. The certificates were signed by A.J. O'Brien and Carol Thomas, both of whom were fictitious persons;
 - b. the investors that he had "borrowed" funds from totaled approximately 25, most of whom were members of Neely's church, the Jehovah's Witnesses;
 - c. Neely had informed a group of 6 or 7 about the "Ponzi" scheme they were involved in, and the rest knew nothing;
 - d. Neely stated that all of the transactions were conducted with either personal or cashier's checks, payable to either Neely or Neely's wife, which Neely would then deposit into one of Neely's bank accounts and a money market account;
 - e. a branch manager at Stifel questioned a cashier's check brought to the office by MR7. Neely told the branch manager that the check was for the purchase of Neely's car and MR7 confirmed this information even though MR7 and Neely were in "cahoots." Neely stated MR7 was under the impression that MR7 was investing funds through the investment club;
 - f. the Stifel branch manager had concerns and when Neely didn't produce a personal bank statement. Neely was "allowed to resign" from Stifel;
 - g. Neely indicated that he had taken funds from approximately twenty-five (25) investors; and

- h. Neely provided the names of fourteen (14) investors that had invested over six hundred and forty thousand dollars (\$640,000) in the St. Louis Investment Club or the St. Charles REIT.
46. On July 8, 2009, AXA terminated Neely for commingling and converting funds intended for investment into Neely's personal use.
47. On July 23, 2009, the Financial Industry Regulatory Authority ("FINRA") accepted Letter of Acceptance, Waiver and Consent ("AWC") NO. 2008015730901. In the AWC, Neely consented to the imposition of a bar from associating with any FINRA members in all capacities. Neely signed the AWC on July 21, 2009.

II. STATUTORY PROVISIONS

48. Section 409.6-601(a), RSMo. (Cum. Supp. 2008), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities"
49. Section 409.1-102(1), RSMo. (Cum. Supp. 2008), defines "Agent" as "an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act."
50. Section 409.1-102(4), RSMo. (Cum. Supp. 2008), defines "Broker-dealer" as "a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account"
51. Section 409.1-102(26), RSMo. (Cum. Supp. 2008), defines "Sale" to include, "every contract of sale, contract to sell, or disposition of, a security or interest in a security for value." That same section defines "offer to sell" as "every attempt to offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value."
52. Section 409.1-102(28), RSMo. (Cum. Supp. 2008), defines "Security", as "a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."
53. Section 409.3-301, RSMo. (Cum. Supp 2008), provides:

It is unlawful for a person to offer or sell a security in this state unless:

- (1) The security is a federal covered security;
- (2) The security, transaction, or offer is exempted from registration under Sections 409.2-201 to 409.2-203; or
- (3) The security is registered under this act.

54. Section 409.4-402(a), RSMo. (Cum. Supp. 2008), provides:

It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or exempt from registration.

55. Section 409.4-412(c), RSMo. (Cum. Supp. 2008), provides:

If the commissioner finds that the order is in the public interest and subsection (d)(1) to (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this act may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of five thousand dollars for a single violation or fifty thousand dollars for several violations on a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser.

56. Section 409.5-501, RSMo. (Cum. Supp. 2008), provides:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit state a material fact
necessary in order to make the statement made, in the light of the circumstances
under which it is made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would
operate as a fraud or deceit upon another person.

57. Section 409.6-604, amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009), provides:

(a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business

constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination

(c)

(d) In a final order under subsection (c), the commissioner may:

(1) Impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation;

(2) Order a person subject to the order to pay restitution for any loss, including the amount of any actual damages that may have been caused by the conduct and interest at the rate of eight percent per year from the date of the violation causing the loss or disgorge any profits arising from the violation;

(3) In addition to any civil penalty otherwise provided by law, impose an additional civil penalty not to exceed five thousand dollars for each such violation if the commissioner finds that a person subject to the order has violated any provision of this act and that such violation was committed against an elderly or disabled person. For purposes of this section, the following terms mean:

(A) "Disabled person", a person with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment;

(B) "Elderly person", a person sixty years of age or older.

(e) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

III. CONCLUSIONS OF LAW

Multiple Violations of Offering and Selling Unregistered, Nonexempt Securities

58. Paragraphs 1 through 57 are incorporated by reference as though fully set forth herein.
59. Neely offered and/or sold a security as those terms are defined in Sections 409.1-102(26) or (28), RSMo. (Cum. Supp. 2008).
60. At all times relevant, records maintained by the Commissioner of Securities contained no registration, granted exemption, or notice filing indicating status as a "federal covered security" for the investments offered and sold by Neely.
61. Neely violated Section 409.3-301, RSMo. (Cum. Supp. 2008), when he offered or sold securities to MR1, MR2, MR3, MR4, MR5, MR6, CR1, and MDR1 in Missouri without these securities being (1) a federal-covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-202, RSMo. (Cum. Supp. 2008), or (3) registered under the Missouri Securities Act of 2003.
62. Respondent's actions in offering or selling nonregistered, non-exempt securities constitute an illegal act, practice, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604, amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009).

Multiple Violations of Transacting Business as an Unregistered Agent

63. Paragraphs 1 through 57 are incorporated by reference as though fully set forth herein.
64. From January 12, 2007 to August 14, 2007, records maintained by the Missouri Commissioner of Securities contained no registration or granted exemption for Neely to transact business as a broker-dealer agent in the state of Missouri.
65. Neely violated Section 409.4-402(a), RSMo. (Cum. Supp. 2008), when he offered and sold securities to CR1 and MDR1, who was elderly, without being registered or exempt from registration as an agent.
66. Respondent's actions in transacting business as an unregistered agent constitute an illegal act, practice, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604, amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009).

Multiple Violations of Making an Untrue Statement or Omitting to State Material Facts in Connection with the Offer or Sale of a Security

67. Paragraphs 1 through 57 are incorporated by reference as though fully set forth herein.
68. In connection with the offer or sale of a security to MR1, Neely made the following untrue statements of material fact, including, but not limited to, the following:

- a. Neely was on the board of an investment club;
 - b. the members of the club invested in a St. Charles REIT; and
 - c. because Neely was on the board of the investment club, Stifel would not accept any checks for investments in either the club or the St. Charles REIT; therefore, any checks must be written payable to Neely.
69. In connection with the offer and sale of a security to MR3, Neely made the following untrue statements of material fact, including, but not limited to, the following:
- a. the investment club would pay all taxes incurred from the REIT investment on behalf of MR3; and
 - b. there were others involved in the investment club that would buy real estate and then investors would get money back on subsequent sales.
70. In connection with the offer and sale of a security to MR4, who was elderly, Neely made the following untrue statements of material fact, including, but not limited to, the following:
- a. the money was invested into land for development; and
 - b. MR4 and other investors would receive returns from the sale of the developed property.
71. In connection with the offer and sale of a security to CR1, Neely made untrue statements of material fact, including, but not limited to, the statement that there were no risks involved with the investment.
72. In connection with the offer and sale of a security to MR6, Neely made the following untrue statements of material fact, including, but not limited to, the following:
- a. returns on the St. Charles REIT were "great;"
 - b. Marshall Faulk, the professional football player, was an investor; and
 - c. that there were no risks involved with the investment.
73. In connection with the offer and sale of a security to MDR1, who was elderly, Neely made untrue statements of material fact, including, but not limited to, the statement that the investment was risk free.
74. In connection with the offer or sale of securities to MR2, Neely omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. the investment was not on the books and records of Stifel;
 - b. the REIT was not registered in the State of Missouri;

- c. money for the REIT investment would be placed into Neely's personal banking account;
 - d. an explanation as to how returns on the investment would be calculated;
 - e. that invoices for the REIT were created on Neely's personal computer; and
 - f. the risks that were involved with the investment.
75. In connection with the offer or sale of securities to MR4, who was elderly, Neely omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. the investment was not on the records of Stifel;
 - b. the investment was not registered in the State of Missouri; and
 - c. the money would be used for Neely's personal expenses.
76. In connection with the offer or sale of securities to MR5, who was elderly, Neely omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. the investment was not on the records of Stifel;
 - b. the investment was not registered in the State of Missouri; and
 - c. the money would be used for Neely's personal expenses.
77. In connection with the offer or sale of securities to CR1, Neely omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. the REIT was not registered in the State of Missouri; and
 - b. the investment money would be used at the discretion of Neely; and
 - c. the investment would be used for Neely's personal expenses.
78. In connection with the offer or sale of securities to MR6, Neely omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. the investment was not on the books and records at AXA;
 - b. the REIT was not registered in the State of Missouri;
 - c. investment money would be placed into Neely's personal checking account; and

d. background or financial information on the St. Louis Investment Club.

79. Respondent violated Section 409.5-501(2), RSMo. (Cum. Supp. 2008), when he made untrue statements of material fact and/or omitted to state material facts necessary to make statements made not misleading, in connection with the offer, sale or purchase of a security.
80. Respondent's actions in making untrue statements and omitting to state material facts necessary in order to make statements made not misleading, in connection with the offer, sale or purchase of a security, constitute illegal acts, practices or courses of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604, amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009).
81. This order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b) RSMo. (Cum. Supp. 2008).

Order

NOW, THEREFORE, it is hereby ordered that Respondent, his agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this Order are prohibited from:

- A. violating or materially aiding in any violation of Section 409.3-301, RSMo. (Cum. Supp. 2008) by offering or selling any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2008), in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301;
- B. violating or materially aiding in any violation of Section 409.4-402, RSMo. (Cum. Supp. 2008), by transacting business as an unregistered agent;
- C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2008), by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Kenneth Neely for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2008), in a final order, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to ten thousand dollars (\$10,000) against Respondent Kenneth Neely for

multiple violations of Section 409.4-402, RSMo. (Cum. Supp. 2008), in a final order, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to ten thousand dollars (\$10,000) against Respondent Kenneth Neely for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2008), in a final order, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an order of restitution, the Commissioner will determine whether to order Respondent Neely to pay restitution for any loss, possibly to include the amount of any actual damages that may have been caused by Respondent Neely's conduct, and interest at the rate of eight percent per year from the date of the violation causing the loss, or disgorge any profits arising from the violation of Sections 409.-3-301, 409.4-402 and 409.5-501, RSMo. (Cum. Supp. 2008), after review of evidence submitted by the Enforcement Section, in a final order, pursuant to Section 409.6-604(d), amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009), unless Respondent requests a hearing and shows cause why this restitution or disgorgement should not be ordered.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award for the costs of the investigation against Respondent in this proceeding, the Commissioner will issue a final order, pursuant to Section 409.6-604(d), amended by H.B. No. 62, section A, 95th Gen. Assem., 1st Reg. Sess., (Mo. 2009), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent requests a hearing and shows cause why an award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 4TH DAY OF NOVEMBER, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES



State of Missouri
Office of Secretary of State

Case No. AP-09-41

IN THE MATTER OF:

KENNETH NEELY, CRD#1586038

Respondent.

Serve: Kenneth Neely
320 Turnberry Place Apt. C
St. Peters, Missouri 63376

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order:

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to § 409.6-604(b), RSMo Supp. 2005, and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

A request for a hearing must be mailed or delivered, in writing, to:

Matthew Kitzi, Commissioner of Securities
Office of the Secretary of State, Missouri
Kirkpatrick State Information Center, Room 229
600 West Main Street
Jefferson City, Missouri, 65102.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2009, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Kenneth Neely
320 Turnberry Place Apt. C
St. Peters, Missouri 63376

And hand delivered to:

Mary S. Hosmer
Assistant Commissioner
Securities Division

John Hale, Specialist